

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Rulemaking for the Purpose of Amending
General Order 156.

Rulemaking 03-02-035
(Filed February 27, 2003)

**ADMINISTRATIVE LAW JUDGE'S RULING
ADDRESSING REQUEST TO FILE
2003 WMDVBE REPORT UNDER SEAL**

On July 9, 2004, AT&T Wireless Services of California, LLC (AT&T Wireless) filed and served a motion for leave to file its unredacted 2003 annual report on procurement activities with women, minority, and service disabled veteran business enterprises (WMDVBE) under seal.¹ (WMDVBE Report.) This ruling denies AT&T Wireless' motion.

The Motion

AT&T Wireless states that carriers are required to include in the WMDVBE Report, among other things, the total amounts spent on procurement during the reporting period as well as the total amount of WMDVBE procurement dollars. Carriers are required to break down WMDVBE procurement amounts by ethnicity as well as product and service category. Carriers are also required to

¹ AT&T Wireless originally filed this motion on April 1, 2004, but only served it on the assigned Administrative Law Judge (ALJ) and requested that she establish a special service list for the motion pursuant to Rule 2.3(g). On July 9, the ALJ by telephone advised AT&T Wireless that she would not establish a special service list and that AT&T Wireless should promptly serve the entire service list with its motion. AT&T Wireless complied with this directive.

state the percentage of total procurement to which the amount in the category equals.

AT&T Wireless believes that the raw data regarding the dollar amounts of its procurement should remain confidential pursuant to General Order (GO) 66-C and Pub. Util. Code § 583, and therefore seeks to file its WMDVBE Report under seal. AT&T Wireless does not seek confidential treatment of the percentages of total procurement attributable to the various categories of WMDVBE procurement.

AT&T Wireless states that disclosing its annual procurement dollars in California would provide valuable information to its competitors in this state regarding its purchasing strategies, expenditures on the WMDVBE program, overall costs and business operations. AT&T Wireless alleges that because the wireless industry is very competitive, such disclosure will place it at an unfair business disadvantage, thereby meriting protection of such information under Section 2.2 of GO 66-C.

AT&T Wireless argues that California Government Code § 6255 also supports its position. Pursuant to this section, a government agency may withhold records from public inspection where “the public interest served by not disclosing the record clearly outweighs any countervailing public interest in disclosure.” AT&T Wireless argues that it will incur the harm described above if this information is disclosed. However, according to AT&T Wireless, public disclosure of this data does little to serve the public interest. AT&T Wireless believes that the information in the WMDVBE Report regarding the percentage levels of the various procurement categories is more than sufficient for interested parties to analyze WMDVBE procurement issues. No party has filed a response to or opposes the motion.

Discussion

The California Public Records Act (Government Code § 6250 et seq.), provides that the “Legislature, mindful of the right of individuals to privacy, finds and declares that access to information concerning the conduct of the people’s business is a fundamental and necessary right of every person in the state.” (§ 6250.) Although documents are sometimes filed under seal under appropriate circumstances, a party seeking confidential treatment, and not the Commission, has the burden of proof in justifying its request.

Here, AT&T Wireless has not met its burden of proof. AT&T Wireless states that disclosure of total procurement dollars or subcategories of such dollars will put it at an unfair disadvantage because it would provide valuable information to its competitors in this state regarding its purchasing strategies, expenditures on the WMDVBE program, overall costs and business operations. It does not precisely describe the imminent and direct harm it may incur as a result of this disclosure. See e.g., D.86-01-026, 20 CPUC2d 237, 252 [“To make the assertion stick that there are valid reasons to take unusual procedural steps to keep data out of the public record...there must be a demonstration of imminent and direct harm of major consequence, not a showing that there may be harm or that the harm is speculative and incidental.”] Moreover, for the last 15 years, the Commission has treated the WMDVBE reports filed by the utilities pursuant to GO 156 as public.

It is the utility, not the Commission, that has the burden of proof on this issue. However, I note that public disclosure of the information in the WMDVBE Report serves the public interest beyond the interest set forth in Government Code § 6250. The California Legislature requires each electrical, gas, and telephone utility with certain revenues to furnish an annual report to the

Commission regarding its implementation of the WMDVBE program. (Pub. Util. Code § 8283(d).) This is the WMDVBE Report which is the subject of this motion. The Commission then uses the information the utilities provide in the Report to compile its report to the Legislature, as required by §8283(e). The Legislature has deemed this issue of sufficient public interest to require the Commission to file annual reports on it, and the report would be meaningless to the public if large portions were redacted.

Moreover, merely providing disclosure of the percentages of WMDVBE procurement is insufficient because the percentages do not give the public even a general idea how much money is spent. For instance, a 50% expenditure on women businesses could mean that 50 cents was spent on them (if the total expenditure was \$1.00) or that \$ 5,000 was spent (if the total expenditure was \$10,000.) In short, simple percentages, without the dollar figures, are meaningless.

For the above reasons, AT&T Wireless' motion is denied.

IT IS RULED that:

1. AT&T Wireless Services of California, LLC's (AT&T Wireless) Motion for Leave to File its Unredacted 2003 WMDVBE Report Under Seal is denied.
2. AT&T Wireless shall file its unredacted 2003 WMDVBE Report with the Commission no later than three business days from the date of this order.

Dated August 4, 2004, at San Francisco, California.

/s/ JANET A. ECONOME

Janet A. Econome
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail, and by electronic mail to the parties to which an electronic mail address has been provided, this day served a true copy of the original attached Administrative Law Judge's Ruling Addressing Request to File 2003 WMDVBE Report Under Seal on all parties of record in this proceeding or their attorneys of record.

Dated August 4, 2004, at San Francisco, California.

/s/ KRIS KELLER

Kris Keller

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to ensure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

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